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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/014,202

11/13/2001

Srinivas Gutta

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09/13/2005

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

LASTRA, DANIEL

ART UNIT

PAPER NUMBER

3622

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/014,202

Applicant(s)

GUTTA, SRINIVAS

Examiner

DANIEL LASTRA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Claims 1 and 3-23 have been examined. Application 10/014,202 (METHOD AND APPARATUS FOR RECOMMENDING ITEMS OF INTEREST BASED ON PREFERENCES OF A SELECTED THIRD PARTY) has a filing date 11/13/2001.

#### ***Response to Amendment***

2. In response to Non Final Rejection filed 03/11/2005, the Applicant filed an Amendment on 06/15/2005, which amended claims 1, 7, 14, 17, 22, 23 and cancel claim 2. Applicant's amendment did not overcome the Section 101 rejection.

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 and 3-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of: (1) whether the invention is within the technological arts; and (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory

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subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, the instant claims fail to recite the use of any type of technology (e.g. computer system) within the recited steps of the claimed method of recommending one or more available items.

Mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result.

Although the claimed invention produces a useful, concrete and tangible result, since the claimed invention as a whole is not within the technological arts, as explained above, claims 1-13 are deemed to be directed to non-statutory subject matter.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Herz (US 5,758,257).

As per claims 1, 14, 17, 22 and 23, Herz teaches:

A *computerized* method for recommending one or more available items to a *target user*, comprising the steps of:

obtaining a history of selecting one or more available items by at least one third party (see column 5, lines 24-54);

*partitioning a third party selection history into a plurality of clusters* (see column 5, lines 24-54), *wherein each cluster contains items that are closer to the mean of the cluster than any other cluster from among the plurality of clusters* (see column 12, lines 29-55; column 37, lines 34-60; column 38, lines 1-55),

*modifying a target user's history of selecting said one or more available items with one or more third party clusters to produce a modified target user's history* (see column 49, lines 1-20);

*processing the modified target user's history to generate a target user profile, wherein the modified target user's history characterizes preferences of the target user as modified to reflect preferences of the third party* (see column 49, lines 1-20);

generating a recommendation score for at least one of said available items (see column 5, lines 5-20) based on said *target user's profile* (see column 49, lines 1-20);  
*and*

*displaying the recommendation score to the target user* (see column 49, lines 1-20).

As per claims 3 and 16, Herz teaches:

The method of claim 2, wherein said obtaining step further comprises the step of receiving a user selection of one or more of said clusters of similar items (see column 5, lines 24-54).

As per claim 4, Herz teaches:

The method of claim 1, wherein said one or more items are programs (see column 5, lines 1-20).

As per claim 5, Herz teaches:

The method of claim 1, wherein said one or more items are content (see column 8, lines 20-25).

As per claim 6, Herz teaches:

The method of claim 1, wherein said one or more items are products (see column 47, lines 53-67).

As per claims 7 and 18, Herz teaches:

A *computerized* method for maintaining a user profile indicating preferences of a user, comprising the steps of:

partitioning a third party selection history into a *plurality of clusters, wherein each cluster contains items that are closer to the mean of the cluster than any other cluster from among the plurality of clusters* (see column 12, lines 29-55; column 38, lines 1-55);

receiving a selection from said user of at least one of said clusters of similar items (see column 5, lines 24-54; column 49, lines 1-20); and

*modifying* updating said user profile using said user selected clusters (see column 6, lines 50-55; column 30, lines 10-25).

As per claims 8 and 19, Herz teaches:

The method of claim 7, wherein said user profile is associated with a program content recommender (see column 4, lines 32-57).

As per claims 9 and 20, Herz teaches:

The method of claim 8, wherein said user profile indicates viewing preferences of said user (see column 4, lines 40-47).

As per claims 10 and 21, Herz teaches:

The method of claim 7, wherein said step of updating said user profile further comprises the steps of updating a selection history of said user with items from said selected clusters and updating said user profile using said updated selection history (see column 6, lines 10-60).

As per claim 11, Herz teaches:

The method of claim 7, wherein said one or more items are programs (see column 5, lines 1-21).

As per claim 12, Herz teaches:

The method of claim 7, wherein said one or more items are content (see column 8, lines 12-22).

As per claim 13, Herz teaches:

The method of claim 7, wherein said one or more items are products (see column 47, lines 52-67).

As per claim 15, Herz teaches:

The system of claim 14, wherein said processor is further configured to partition said third party selection history into clusters containing similar items (see column 5, lines 24-54).

### ***Response to Arguments***

4. Applicant's arguments filed 06/15/2005 have been fully considered but they are not persuasive. The Applicant's amendment did not overcome the Section 101 because the Applicant needs to include computer implementation into the embodiment of the claims. Applicant is arguing about limitations that are not stated in the claims when Applicant mentions that claim 1 recites "computerized generation of a recommendation score".

The Applicant argues that the Applicant claimed invention does not teach combining customer profiles. The Examiners answers that Applicant's specification page 5, lines 27-33 teaches "the user can select one or more clusters from the clustered third party viewing history to supplement or replace corresponding portions (clusters) of the user's own viewing history". Therefore, Applicant's specification teaches the combination (i.e. supplement) of customer profiles, similar to the prior art Herz (see column 49, lines 1-20).

The Applicant argues that the multiplicity of customers profiles of Herz is in stark contrast to the single user profile of the Applicant's claimed invention. The Examiner answers that Herz teaches in column 30, lines 10-20 the use of passive feedback to improve individual customer profiles and to improve customer profile for clusters of customers and that customer profiles of customer clusters can be used to improve the

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profiles of all customers constituting the cluster. Therefore, Herz teaches single user profile, similar to the Applicant's claimed invention.

The Applicant argues that Herz operates exclusively at the profile level, and does not teach or disclose the use of cluster. The Examiner answers that Herz teaches profiling customers using clustering techniques (see Herz column 34, lines 13-24).

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720. The examiner can normally be reached on 9:30-6:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W. STAMBER can be reached on 571-272-6724. The Examiner's Right fax number is 571-273-6720.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DL

Daniel Lastra  
August 29, 2005

  
RETTA YEHDEGA  
PRIMARY EXAMINER